

SECOND REGULAR SESSION

# SENATE BILL NO. 946

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR SHIELDS.

Read 1st time January 24, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

4489S.01I

## AN ACT

To repeal section 105.711, RSMo, and to enact in lieu thereof one new section relating to the state legal expense fund.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 105.711, RSMo, is repealed and one new section  
2 enacted in lieu thereof, to be known as section 105.711, to read as follows:

105.711. 1. There is hereby created a "State Legal Expense Fund" which  
2 shall consist of moneys appropriated to the fund by the general assembly and  
3 moneys otherwise credited to such fund pursuant to section 105.716.

4 2. Moneys in the state legal expense fund shall be available for the  
5 payment of any claim or any amount required by any final judgment rendered by  
6 a court of competent jurisdiction against:

7 (1) The state of Missouri, or any agency of the state, pursuant to section  
8 536.050 or 536.087, RSMo, or section 537.600, RSMo;

9 (2) Any officer or employee of the state of Missouri or any agency of the  
10 state, including, without limitation, elected officials, appointees, members of state  
11 boards or commissions, and members of the Missouri national guard upon conduct  
12 of such officer or employee arising out of and performed in connection with his or  
13 her official duties on behalf of the state, or any agency of the state, provided that  
14 moneys in this fund shall not be available for payment of claims made under  
15 chapter 287, RSMo; or

16 (3) (a) Any physician, psychiatrist, pharmacist, podiatrist, dentist, nurse,  
17 or other health care provider licensed to practice in Missouri under the provisions  
18 of chapter 330, 332, 334, 335, 336, 337 or 338, RSMo, who is employed by the  
19 state of Missouri or any agency of the state, under formal contract to conduct

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

20 disability reviews on behalf of the department of elementary and secondary  
21 education or provide services to patients or inmates of state correctional facilities  
22 on a part-time basis, and any physician, psychiatrist, pharmacist, podiatrist,  
23 dentist, nurse, or other health care provider licensed to practice in Missouri under  
24 the provisions of chapter 330, 332, 334, 335, 336, 337, or 338, RSMo, who is under  
25 formal contract to provide services to patients or inmates at a county jail on a  
26 part-time basis;

27 (b) Any physician licensed to practice medicine in Missouri under the  
28 provisions of chapter 334, RSMo, and his professional corporation organized  
29 pursuant to chapter 356, RSMo, who is employed by or under contract with a city  
30 or county health department organized under chapter 192, RSMo, or chapter 205,  
31 RSMo, or a city health department operating under a city charter, or a combined  
32 city-county health department to provide services to patients for medical care  
33 caused by pregnancy, delivery, and child care, if such medical services are  
34 provided by the physician pursuant to the contract without compensation or the  
35 physician is paid from no other source than a governmental agency except for  
36 patient co-payments required by federal or state law or local ordinance;

37 (c) Any physician licensed to practice medicine in Missouri under the  
38 provisions of chapter 334, RSMo, who is employed by or under contract with a  
39 federally funded community health center organized under Section 315, 329, 330  
40 or 340 of the Public Health Services Act (42 U.S.C. 216, 254c) to provide services  
41 to patients for medical care caused by pregnancy, delivery, and child care, if such  
42 medical services are provided by the physician pursuant to the contract or  
43 employment agreement without compensation or the physician is paid from no  
44 other source than a governmental agency or such a federally funded community  
45 health center except for patient co-payments required by federal or state law or  
46 local ordinance. In the case of any claim or judgment that arises under this  
47 paragraph, the aggregate of payments from the state legal expense fund shall be  
48 limited to a maximum of one million dollars for all claims arising out of and  
49 judgments based upon the same act or acts alleged in a single cause against any  
50 such physician, and shall not exceed one million dollars for any one claimant;

51 (d) Any physician licensed pursuant to chapter 334, RSMo, who is  
52 affiliated with and receives no compensation from a nonprofit entity qualified as  
53 exempt from federal taxation under Section 501(c)(3) of the Internal Revenue  
54 Code of 1986, as amended, which offers a free health screening in any setting or  
55 any physician, nurse, physician assistant, dental hygienist, [or] dentist, **or other**  
56 **health care provider** licensed or registered pursuant to chapter **330, 331, 332,**

57 [RSMo, chapter] 334, [RSMo, or chapter] 335, **336, 337, or 338**, RSMo, who  
58 provides [medical, dental, or nursing treatment] **health care services** within the  
59 scope of his **or her** license or registration at a city or county health department  
60 organized under chapter 192, RSMo, or chapter 205, RSMo, a city health  
61 department operating under a city charter, or a combined city-county health  
62 department, or a nonprofit community health center qualified as exempt from  
63 federal taxation under Section 501(c)(3) of the Internal Revenue Code of 1986, as  
64 amended, if such [treatment is] **services are** restricted to primary care and  
65 preventive health services, provided that such [treatment] **services** shall not  
66 include the performance of an abortion, and if such [medical, dental, or nursing]  
67 **health** services are provided by the [physician, dentist, physician assistant,  
68 dental hygienist, or nurse] **health care provider licensed or registered**  
69 **under chapter 330, 331, 332, 334, 335, 336, 337, or 338, RSMo**, without  
70 compensation. Medicaid or medicare payments for primary care and preventive  
71 health services provided by a [physician, dentist, physician assistant, dental  
72 hygienist, or nurse] **health care provider licensed or registered under**  
73 **chapter 330, 331, 332, 334, 335, 336, 337, or 338, RSMo**, who volunteers at a  
74 free health clinic is not compensation for the purpose of this section if the total  
75 payment is assigned to the free health clinic. For the purposes of the section,  
76 "free health clinic" means a nonprofit community health center qualified as  
77 exempt from federal taxation under Section 501 (c)(3) of the Internal Revenue  
78 Code of 1987, as amended, that provides primary care and preventive health  
79 services to people without health insurance coverage for the services provided  
80 without charge. In the case of any claim or judgment that arises under this  
81 paragraph, the aggregate of payments from the state legal expense fund shall be  
82 limited to a maximum of five hundred thousand dollars, for all claims arising out  
83 of and judgments based upon the same act or acts alleged in a single cause and  
84 shall not exceed five hundred thousand dollars for any one claimant, and  
85 insurance policies purchased pursuant to the provisions of section 105.721 shall  
86 be limited to five hundred thousand dollars. Liability or malpractice insurance  
87 obtained and maintained in force by or on behalf of any [physician, dentist,  
88 physician assistant, dental hygienist, or nurse] **health care provider licensed**  
89 **or registered under chapter 330, 331, 332, 334, 335, 336, 337, or 338, RSMo**,  
90 shall not be considered available to pay that portion of a judgment or claim for  
91 which the state legal expense fund is liable under this paragraph; or

92 (e) Any physician, nurse, physician assistant, dental hygienist, or dentist  
93 licensed or registered to practice medicine, nursing, or dentistry or to act as a

94 physician assistant or dental hygienist in Missouri under the provisions of  
95 chapter 332, RSMo, chapter 334, RSMo, or chapter 335, RSMo, who provides  
96 medical, nursing, or dental treatment within the scope of his license or  
97 registration to students of a school whether a public, private, or parochial  
98 elementary or secondary school, if such physician's treatment is restricted to  
99 primary care and preventive health services and if such medical, dental, or  
100 nursing services are provided by the physician, dentist, physician assistant,  
101 dental hygienist, or nurse without compensation. In the case of any claim or  
102 judgment that arises under this paragraph, the aggregate of payments from the  
103 state legal expense fund shall be limited to a maximum of five hundred thousand  
104 dollars, for all claims arising out of and judgments based upon the same act or  
105 acts alleged in a single cause and shall not exceed five hundred thousand dollars  
106 for any one claimant, and insurance policies purchased pursuant to the provisions  
107 of section 105.721 shall be limited to five hundred thousand dollars; or

108       **(f) Any physician licensed under chapter 334, RSMo, or dentist**  
109 **licensed under chapter 332, RSMo, providing specialty care without**  
110 **compensation to an individual referred to his or her care by a city or**  
111 **county health department organized under chapter 192 or 205, RSMo, a**  
112 **city health department operating under a city charter, or a combined**  
113 **city-county health department or a nonprofit community health center**  
114 **qualified as exempt from federal taxation under section 501(c)(3) of the**  
115 **Internal Revenue Code of 1986, as amended, or a federally funded**  
116 **community health center organized under Sections 315, 329, 330, or 340**  
117 **of the Public Health Services Act (42 U.S.C. Section 216, 254c), provided**  
118 **that such treatment shall not include the performance of an abortion. In**  
119 **the case of any claim or judgment that arises under this paragraph, the**  
120 **aggregate of payments from the state legal expense fund shall be limited**  
121 **to a maximum of one million dollars, for all claims arising out of and**  
122 **judgments based upon the same act or acts alleged in a single cause and**  
123 **shall not exceed one million dollars for any one claimant, and insurance**  
124 **policies purchased under the provisions of section 105.721 shall be**  
125 **limited to one million dollars. Liability or malpractice insurance**  
126 **obtained and maintained in force by or on behalf of any physician**  
127 **licensed under chapter 332, RSMo, or any dentist licensed under chapter**  
128 **334, RSMo, shall not be considered available to pay that portion of a**  
129 **judgment or claim for which the state legal expense fund is liable under**  
130 **this paragraph; or**

131 (4) Staff employed by the juvenile division of any judicial circuit; or  
132 (5) Any attorney licensed to practice law in the state of Missouri who  
133 practices law at or through a nonprofit community social services center qualified  
134 as exempt from federal taxation under Section 501(c)(3) of the Internal Revenue  
135 Code of 1986, as amended, or through any agency of any federal, state, or local  
136 government, if such legal practice is provided by the attorney without  
137 compensation. In the case of any claim or judgment that arises under this  
138 subdivision, the aggregate of payments from the state legal expense fund shall be  
139 limited to a maximum of five hundred thousand dollars for all claims arising out  
140 of and judgments based upon the same act or acts alleged in a single cause and  
141 shall not exceed five hundred thousand dollars for any one claimant, and  
142 insurance policies purchased pursuant to the provisions of section 105.721 shall  
143 be limited to five hundred thousand dollars.

144 3. The department of health and senior services shall promulgate rules  
145 regarding contract procedures and the documentation of care provided under  
146 paragraphs (b), (c), (d), [and] (e), **and (f)** of subdivision (3) of subsection 2 of this  
147 section. The limitation on payments from the state legal expense fund or any  
148 policy of insurance procured pursuant to the provisions of section 105.721,  
149 provided in subsection 7 of this section, shall not apply to any claim or judgment  
150 arising under paragraph (a), (b), (c), (d), [or] (e), **or (f)** of subdivision (3) of  
151 subsection 2 of this section. Any claim or judgment arising under paragraph (a),  
152 (b), (c), (d), [or] (e), **or (f)** of subdivision (3) of subsection 2 of this section shall  
153 be paid by the state legal expense fund or any policy of insurance procured  
154 pursuant to section 105.721, to the extent damages are allowed under sections  
155 538.205 to 538.235, RSMo. Liability or malpractice insurance obtained and  
156 maintained in force by any [physician, dentist, physician assistant, dental  
157 hygienist, or nurse] **health care provider licensed under chapter 330, 331,**  
158 **332, 334, 335, 336, 337, or 338, RSMo,** for coverage concerning his or her  
159 private practice and assets shall not be considered available under subsection 7  
160 of this section to pay that portion of a judgment or claim for which the state legal  
161 expense fund is liable under paragraph (a), (b), (c), (d), [or] (e), **or (f)** of  
162 subdivision (3) of subsection 2 of this section. However, a [physician, nurse,  
163 dentist, physician assistant, or dental hygienist] **health care provider licensed**  
164 **under chapter 330, 331, 332, 334, 335, 336, 337, or 338, RSMo,** may purchase  
165 liability or malpractice insurance for coverage of liability claims or judgments  
166 based upon care rendered under paragraphs (c), (d), [and] (e), **and (f)** of  
167 subdivision (3) of subsection 2 of this section which exceed the amount of liability

168 coverage provided by the state legal expense fund under those paragraphs. Even  
169 if paragraph (a), (b), (c), (d), [or] (e), **or (f)** of subdivision (3) of subsection 2 of  
170 this section is repealed or modified, the state legal expense fund shall be available  
171 for damages which occur while the pertinent paragraph (a), (b), (c), (d), [or] (e),  
172 **or (f)** of subdivision (3) of subsection 2 of this section is in effect.

173 4. The attorney general shall promulgate rules regarding contract  
174 procedures and the documentation of legal practice provided under subdivision (5)  
175 of subsection 2 of this section. The limitation on payments from the state legal  
176 expense fund or any policy of insurance procured pursuant to section 105.721 as  
177 provided in subsection 7 of this section shall not apply to any claim or judgment  
178 arising under subdivision (5) of subsection 2 of this section. Any claim or  
179 judgment arising under subdivision (5) of subsection 2 of this section shall be paid  
180 by the state legal expense fund or any policy of insurance procured pursuant to  
181 section 105.721 to the extent damages are allowed under sections 538.205 to  
182 538.235, RSMo. Liability or malpractice insurance otherwise obtained and  
183 maintained in force shall not be considered available under subsection 7 of this  
184 section to pay that portion of a judgment or claim for which the state legal  
185 expense fund is liable under subdivision (5) of subsection 2 of this  
186 section. However, an attorney may obtain liability or malpractice insurance for  
187 coverage of liability claims or judgments based upon legal practice rendered under  
188 subdivision (5) of subsection 2 of this section that exceed the amount of liability  
189 coverage provided by the state legal expense fund under subdivision (5) of  
190 subsection 2 of this section. Even if subdivision (5) of subsection 2 of this section  
191 is repealed or amended, the state legal expense fund shall be available for  
192 damages that occur while the pertinent subdivision (5) of subsection 2 of this  
193 section is in effect.

194 5. All payments shall be made from the state legal expense fund by the  
195 commissioner of administration with the approval of the attorney  
196 general. Payment from the state legal expense fund of a claim or final judgment  
197 award against a [physician, dentist, physician assistant, dental hygienist, or  
198 nurse] **health care provider licensed under chapter 330, 331, 332, 334, 335,**  
199 **336, 337, or 338, RSMo,** described in paragraph (a), (b), (c), (d), [or] (e), **or (f)**  
200 of subdivision (3) of subsection 2 of this section, or against an attorney in  
201 subdivision (5) of subsection 2 of this section, shall only be made for services  
202 rendered in accordance with the conditions of such paragraphs. In the case of any  
203 claim or judgment against an officer or employee of the state or any agency of the  
204 state based upon conduct of such officer or employee arising out of and performed

205 in connection with his or her official duties on behalf of the state or any agency  
206 of the state that would give rise to a cause of action under section 537.600, RSMo,  
207 the state legal expense fund shall be liable, excluding punitive damages, for:

- 208 (1) Economic damages to any one claimant; and  
209 (2) Up to three hundred fifty thousand dollars for noneconomic damages.

210 The state legal expense fund shall be the exclusive remedy and shall preclude any  
211 other civil actions or proceedings for money damages arising out of or relating to  
212 the same subject matter against the state officer or employee, or the officer's or  
213 employee's estate. No officer or employee of the state or any agency of the state  
214 shall be individually liable in his or her personal capacity for conduct of such  
215 officer or employee arising out of and performed in connection with his or her  
216 official duties on behalf of the state or any agency of the state. The provisions of  
217 this subsection shall not apply to any defendant who is not an officer or employee  
218 of the state or any agency of the state in any proceeding against an officer or  
219 employee of the state or any agency of the state. Nothing in this subsection shall  
220 limit the rights and remedies otherwise available to a claimant under state law  
221 or common law in proceedings where one or more defendants is not an officer or  
222 employee of the state or any agency of the state.

223 6. The limitation on awards for noneconomic damages provided for in this  
224 subsection shall be increased or decreased on an annual basis effective January  
225 first of each year in accordance with the Implicit Price Deflator for Personal  
226 Consumption Expenditures as published by the Bureau of Economic Analysis of  
227 the United States Department of Commerce. The current value of the limitation  
228 shall be calculated by the director of the department of insurance, who shall  
229 furnish that value to the secretary of state, who shall publish such value in the  
230 Missouri Register as soon after each January first as practicable, but it shall  
231 otherwise be exempt from the provisions of section 536.021, RSMo.

232 7. Except as provided in subsection 3 of this section, in the case of any  
233 claim or judgment that arises under sections 537.600 and 537.610, RSMo, against  
234 the state of Missouri, or an agency of the state, the aggregate of payments from  
235 the state legal expense fund and from any policy of insurance procured pursuant  
236 to the provisions of section 105.721 shall not exceed the limits of liability as  
237 provided in sections 537.600 to 537.610, RSMo. No payment shall be made from  
238 the state legal expense fund or any policy of insurance procured with state funds  
239 pursuant to section 105.721 unless and until the benefits provided to pay the  
240 claim by any other policy of liability insurance have been exhausted.

241 8. The provisions of section 33.080, RSMo, notwithstanding, any moneys

242 remaining to the credit of the state legal expense fund at the end of an  
243 appropriation period shall not be transferred to general revenue.

244           9. Any rule or portion of a rule, as that term is defined in section 536.010,  
245 RSMo, that is promulgated under the authority delegated in sections 105.711 to  
246 105.726 shall become effective only if it has been promulgated pursuant to the  
247 provisions of chapter 536, RSMo. Nothing in this section shall be interpreted to  
248 repeal or affect the validity of any rule filed or adopted prior to August 28, 1999,  
249 if it fully complied with the provisions of chapter 536, RSMo. This section and  
250 chapter 536, RSMo, are nonseverable and if any of the powers vested with the  
251 general assembly pursuant to chapter 536, RSMo, to review, to delay the effective  
252 date, or to disapprove and annul a rule are subsequently held unconstitutional,  
253 then the grant of rulemaking authority and any rule proposed or adopted after  
254 August 28, 1999, shall be invalid and void.

✓

Bill

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